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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/515,348	02/29/2000	Christopher A. Spence	F0039	2076
45305	7590	07/28/2006	EXAMINER	
RENNER, OTTO, BOISSELLE & SKLAR, LLP (AMDS) 1621 EUCLID AVE - 19TH FLOOR CLEVELAND, OH 44115-2191			ART UNIT	PAPER NUMBER

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

09/515,348

Applicant(s)

SPENCE, CHRISTOPHER A.

Examiner

Brian P. Werner

Art Unit

2621

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**


The Appeal Brief filed on 24 April 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Attachment.

  
**BRIAN WERNER**  
**PRIMARY EXAMINER**

The Rule 116 amendment received on September 28, 2005 *will not be entered*. In applicant's reply filed with the Rule 116 amendment, applicant stated:

**It is believed that the reply raises no new issues, does not require an additional search and/or places the application in a better condition for allowance and/or appeal.**

**Specifically, previously dependent claim 25 has been rewritten in independent form including the limitations of now cancelled claim 1. Accordingly, entry of the reply is considered proper.**

At the time, the examiner agreed that the amendment, which was thought to merely combine dependent claim 25 with independent claim 1, would indeed place "the applicant in a better condition for allowance and/or appeal". An advisory action was mailed on November 4, 2005 stating as much. However, upon further review of the Rule 116 amendment, is noted that because of the changes to claim dependencies (i.e., claims 5 and 6), and because of the restructuring of the only remaining independent claim (claim 25 in the Rule 116 amendment), certain claims are now left without prior art rejections: Namely, claims 9, 12 and 16. This fact is noted by the appellant in the Appeal Brief received on April 24, 2006, at page 4, which states:

<sup>2</sup> In light of the amendment under 37 CFR 1.116, which was entered for purposes of appeal, claims 8, 9 and 13-20 ultimately depend from independent claim 25 (with or without intervening dependent claims). The final office action, mailed June 28, 2005, is not understood to reject claim 25 based on Pierrat et al. In essence, the amendment under 37 CFR 1.116 renders moot this rejection of claims 8, 9 and 13-20.

<sup>3</sup> In light of the amendment under 37 CFR 1.116, which was entered for purposes of appeal, claims 10-12 ultimately depend from independent claim 25 (with or without intervening dependent claims). The final office action, mailed June 28, 2005, is not understood to reject claim 25 based on Pierrat et al. In essence, the amendment under 37 CFR 1.116 renders moot this rejection of claims 10-12.

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Even if the examiner were to be affirmed on appeal, claims 9, 12 and 16 would not be art rejected and prosecution would need to be reopened; as the examiner does not believe they are novel or unobvious combinations. Therefore, the Rule 116 amendment does NOT place the applicant in a better condition for appeal, and will **NOT BE ENTERED**.

In order for the appeal to proceed, the examiner suggests re-drafting the Appeal Brief to address the claims as presented in the January 10, 2005 amendment, which were finally rejected in the June 28, 2005 Office Action. These claims still retain the exact same subject matter appealed in the Appeal Brief in regards to independent claim 25. Therefore, the Appeal Brief filed on April 24, 2006 is defective as not addressing finally rejected claims. The examiner regrets any inconvenience, but must take this action to obviate the reopening of prosecution after the appeal decision to address those claims not art rejected because the Rule 116 amendment.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Werner whose telephone number is 571-272-7401. The examiner can normally be reached on M-F, 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew C. Bella can be reached on (571) 272-7778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian Werner  
Primary Examiner  
Art Unit 2621  
July 21, 2006



BRIAN WERNER  
PRIMARY EXAMINER